

REMARKS

Claim 1 has been amended to limit the PPO inhibiting herbicide to Compound (A), as taught in claim 5. Accordingly, claims 3-6 have been cancelled without prejudice to the subject matter thereof. Claim 8 has been amended to remove compound (A) from the list of co-herbicides. Claims 14, 19 and 20 have been amended to insert the structure for compounds of formula (C) and (D). Claim 18 has been amended to remove the preferred embodiment of quinoline safeners. Accordingly, new claim 21 has been added to specifically claim cloquintocet-mexyl. No new matter has been added.

The present invention relates to a herbicidal synergistic composition for the selective control of broad-leaved weeds and grasses in crops made resistant to protoporphyrinogen oxidase inhibitors comprising as active compounds a mixture of

- a) a herbicide which inhibits the action of protoporphyrinogen oxidases in plants (= protoporphyrinogen oxidase inhibitors = PPO inhibitors) and
- b) at least one further pesticide selected from the group consisting of co-herbicides, fungicides and insecticides/acaricides,

which protects the useful genetically transformed crop plants but not the weeds from the phytotoxic action of the herbicidal composition.

As mentioned on page 1, fourth paragraph of the specification, the PPO inhibitors under a) and the co-herbicides under b) useful in the present composition are known. The essential feature of instant invention therefore is to provide a composition of defined PPO inhibitors a) and at least one known pesticide e.g. a co-herbicide b) which composition when applied to PPO inhibitor resistant crops leads to synergistically improved and economically relevant toxic effects to said pest organisms, e.g., phytotoxic effects against unwanted weeds, without being harmful to the useful crop plants simultaneously, i.e., without leading to comparable synergistically enhanced phytotoxic effects on the PPO inhibitor resistant crop plants.

In the Final Rejection mailed May 31, 2002, claims 1-20 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Sato et al (US 6,127,318) in view of Volrath et al (US 6,084,155) and Devine et al (Physiology of Herbicide Action, p. 152-163 (1993)). Applicants respectfully traverse.

The Examiner rejects claims 1-20 stating the Sato et al. "teach the combination of glyphosate and a PPO inhibiting herbicide", Volrath et al. "teach that applicants' PPO inhibiting

herbicides were known” and Devine et al. “teach that there were several known antagonists (safeners) of the PPO inhibiting nitrodiphenylether herbicides.”

The Examiner states that it would have been *prima facie* obvious to one skilled in the art at the time the invention was made to have combined PPO inhibiting herbicides with additional pesticidal agents, and safeners, because Sato teaches that glyphosate is useful in such a combination.

The Examiner further states that the declaration filed with Applicants previous amendment shows unexpected herbicidal activity for one PPO inhibiting compound (Compound A, as in claim 5, thus “a claim drawn to the composition of claim 1 which is limited to this PPO inhibiting herbicide would be allowable.”

Applicants hereby refer the Examiner to the arguments of record in Applicants’ response mailed March 4, 2002, which are incorporated herein.

As set forth in Applicants’ previous response, the cited documents neither per se nor in combination are providing any motivation to combine PPO inhibitors and co-herbicides in order to arrive at the surprising effects on weeds and protox inhibitor tolerant crop plants according to instant invention. There is nothing in the cited documents, neither taken alone nor in combination, which puts the present invention in the hands of the one of ordinary skill in the art. Sato et al. is the only document exemplifying protox inhibitors (carfentrazone-ethyl) in combination with co-herbicides (glyphosate) however without any hint to the surprising effects of such combinations as instantly claimed. The deficiencies of the primary reference Sato et al. are not remedied by the secondary references Volrath et al and Devine et al. The cited documents constitute no more than remote state of the art, which is not useful for the understanding of the claimed invention. Moreover, the cited references are unrelated to each other and to instantly claimed subject matter.

The subject matter as claimed in instant claims thus remains unobvious over the combined teachings of Sato et al, Volrath et al and Devine et al.

However, in order to advance the prosecution, Applicants have limited the subject matter of claim 1 to the PPO inhibiting herbicides of claim 5, without prejudice to the remaining PPO inhibiting herbicides.

In view of the above amendments, arguments and deficiencies of the prior art, Applicants respectfully submit that the rejection under 35 U.S.C. §§ 103(a) has been overcome and hereby request that this application be passed to issue.

As this response is submitted with the required fee for a three-month extension of time and the appropriate RCE fee, it is believed that no additional fees are necessary.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit

the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409

Date: April 28, 2003

Respectfully submitted,



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